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In the matter of
Kenneth A. "Buddy" Barfield

MUR 6761

CELA

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

Take no further action as to Kenneth A. Barfield and close the file in this matter.

II. BACKGROUND

Dewhurst for Texas ("DFT") filed the Complaint in this matter, which alleged that Kenneth A. "Buddy" Barfield, while serving as DFT's campaign manager and assistant treasurer, embezzled approximately \$1.2 million from DFT.¹ On May 19, 2015, the Commission found reason to believe that Barfield knowingly and willfully violated 52 U.S.C. §§ 30102(b), 30102(c), 30114, 30116, 30122, and 30125(e).²

On October 21, 2014, Barfield pleaded guilty to three criminal counts, including "Embezzlement of Funds Contributed to a Federal Candidate," a provision of the Federal Election Campaign Act of 1971, as amended ("Act"), and he began serving an eighty-seven month sentence in federal prison on June 11, 2015.³ Barfield was also ordered to pay \$2,940,821 in restitution, and he liquidated all of his assets, including his house, to fulfill that obligation.⁴

¹ See Compl. at 1 (Nov. 4, 2013). The Complaint is a resubmission of a previous *sua sponte* submission that the Committee filed on July 31, 2013, describing Barfield as the respondent and alleging that he violated the law. See Letter from Curt E. Beck, Asst. Treasurer, Dewhurst for Texas, to Jeff S. Jordan, Asst. Gen. Counsel, FEC (Nov. 4, 2013).

² See Certification, MUR 6761 (Kenneth A. Barfield) (May 21, 2015). The Commission also found no reason to believe that Barfield violated 52 U.S.C. § 30104(b). *Id.*

³ See 2 U.S.C. § 439a(b) [now 52 U.S.C. § 30114(b)]; Letter from E.G. Morris, Counsel for Kenneth A. Barfield, to FEC (June 5, 2015). Barfield also pleaded guilty to wire fraud, 18 U.S.C. § 1343, and making and subscribing a false tax return, 26 U.S.C. § 7206(1).

⁴ See Letter from E.G. Morris, *supra*.

1 Notwithstanding Barfield's guilty plea on criminal charges, the Commission authorized
2 an investigation to ascertain the extent of Barfield's violations of the Act.

3
4 Our investigation uncovered information that
5 prompted the Commission to notify Barfield's assistant, Teresa Wheatley, and find reason to
6 believe she violated 52 U.S.C. § 30122.⁵ Wheatley ultimately agreed to a pre-probable cause
7 conciliation agreement with the Commission.⁶ However, the investigation did not reveal any
8 significant additional relevant information regarding Barfield's conduct.⁷

9 For the reasons set forth below, we recommend that the Commission take no further
10 action as to Barfield and close the file in this matter.

11 **III. FACTUAL AND LEGAL ANALYSIS**

12 As detailed in its Factual and Legal Analysis, the Commission found reason to believe
13 that Barfield knowingly and willfully violated the Act by embezzling approximately \$1.2 million
14 from DFT. Barfield embezzled the funds by directing Wheatley to submit fraudulent invoices to
15 DFT from his consulting firm, Alexander Consulting Group, LLC ("AGC"), for campaign
16 services that AGC never provided, and approved payment to AGC on each of those invoices.⁸
17 When DFT became unable to cover its obligations because of Barfield's embezzlement, Barfield
18 used personal funds and funds from AGC's accounts to pay vendors for services rendered to
19 DFT, directed the use of nonfederal funds from Dewhurst's state committee, the David Dewhurst

⁵ See Certification, MUR 6761 (Teresa Wheatley) (Oct. 18, 2016).

⁶ See Certification, MUR 6761 (Teresa Wheatley) (Nov. 30, 2016).

⁷ As set forth below, the Commission had obtained substantial information regarding Barfield's conduct at the pre-RTB stage, based on DFT's internal investigation, which was incorporated into DFT's *sua sponte* submission and complaint.

⁸ Factual and Legal Analysis ("F&LA") at 4-5, MUR 6761 (May 21, 2015); *see* 52 U.S.C. § 30114(b).

1 Committee ("DDC"), to pay DFT's obligations, and instructed Wheatley to contribute \$5,000 to
2 DFT in her own name with funds wired to her bank account from AGC's account.⁹ Barfield also
3 directed the creation of false records concerning DFT's expenditures and contributions,
4 undermining DFT's ability to accurately keep records as required under the Act.¹⁰ Thus, the
5 available record indicates that Barfield's violations of the Act all stem from his embezzlement
6 scheme: all of his conduct was either part of, or an attempt to conceal, his theft of DFT's funds.

7 Barfield pleaded guilty to three criminal counts, including "Embezzlement of Funds
8 Contributed to a Federal Candidate," a provision of the Act.¹¹ He is currently serving an eighty-
9 seven-month term in federal prison and was ordered to pay restitution of nearly \$3 million, which
10 required him to liquidate his assets, including his house. As such, Barfield has admitted and
11 been criminally penalized for engaging in activity that violated the Act. Under these
12 circumstances, Commission precedent supports taking no further action and close the file.

13 As a matter of prosecutorial discretion, the Commission has declined to pursue matters in
14 which it found that a related criminal conviction adequately vindicated its civil enforcement
15 interests under the Act. For example, in MUR 7072, Babulal Bera pleaded guilty to one criminal
16 count each under 52 U.S.C. §§ 30116(a)(1)(A) and 30122 for making excessive contributions
17 and contributions in the names of others. Bera admitted reimbursing over \$260,000 in
18 contributions, using approximately 90 conduits, during the 2010 and 2012 election cycles.¹²
19 Bera was sentenced to a prison term of one year and one day, supervised release for a term of 36

⁹ F&LA at 5–6, MUR 6761; see 52 U.S.C. §§ 30116, 30122, 30125(e). Dewhurst served as Lieutenant-Governor of Texas from 2002 to 2015, and DDC, which is registered with the Texas Ethics Commission, was his state campaign committee for that office. Barfield served as DDC's 2010 campaign manager and executive director.

¹⁰ F&LA at 7–9, MUR 6761; see 52 U.S.C. § 30102(b)–(c).

¹¹ 52 U.S.C. § 30114(b).

¹² F&LA at 1–2, MUR 7072 (Babulal Bera) (Jan. 4, 2017).

1 months, and a criminal fine of \$100,000.¹³ While the Commission noted that Bera's
2 "contribution scheme appears to be among the largest [ever] considered," it declined to pursue
3 further action in light of Bera's guilty plea and the substantial criminal sentence imposed.¹⁴

4 Similarly, in MUR 6231, Glenn Marshall pleaded guilty to five criminal counts under
5 2 U.S.C. §§ 441b and 441f [now 52 U.S.C. §§ 30118 and 30122]. Marshall was sentenced to
6 serve a forty-one month term in federal prison and ordered to pay restitution of \$467,612.62.¹⁵
7 The Commission determined that Marshall's criminal punishment was sufficient to address his
8 violations of the Act, and accordingly declined to pursue further action in the matter.¹⁶

9 Likewise, in MUR 6232, Gladwin Gill pled guilty to one criminal count of making
10 contributions in the name of another totaling \$66,700, in violation of 2 U.S.C. § 441f [now
11 52 U.S.C. § 30122].¹⁷ Gill was sentenced to serve one year and one day in federal prison,
12 followed by three years of supervised release, and was fined \$200,100, or 300% of the amount in
13 violation.¹⁸ The Commission determined that Gill's conduct was a "clear violation of § 441f [of
14 the Act]," but concluded that his "criminal punishment, including both the prison sentence and
15 the substantial fine imposed upon him, is sufficient to address his violation[,] and accordingly

¹³ *Id.* at 3.

¹⁴ *Id.* at 5–6. The Commission also took into consideration Bera's advanced age and the fact that the statute of limitations had run on most of the activity at issue.

¹⁵ F&LA at 2, 5, MUR 6231 (Glenn Marshall) (Nov. 17, 2009).

¹⁶ *Id.* at 6–8. Although the Commission opened a matter under review to create a public record of its analysis and conclusions, and promote the interests of transparency and providing guidance, it exercised its prosecutorial discretion to dismiss the matter and closed the file. *Id.* at 1.

¹⁷ F&LA at 1, MUR 6232 (Gladwin Gill) (Nov. 17, 2009).

¹⁸ *Id.*

1 exercised its prosecutorial discretion to dismiss the matter and close the file.¹⁹

2 By contrast, in some prior matters where the Commission took further action by
3 negotiating a conciliation agreement after making a reason to believe finding, the criminal
4 convictions stemming from the same activity did not specifically vindicate the Act's discrete
5 enforcement interests. For instance, in MUR 6465, the Commission approved a conciliation
6 agreement with John Junker, including a \$25,000 civil penalty, after finding reason to believe
7 that Junker knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f [now 52 U.S.C.
8 §§ 30118(a), 30122].²⁰ While Junker admitted making prohibited corporate contributions and
9 contributions in the names of others, he pleaded guilty to one count of Conspiracy, 18 U.S.C.
10 § 371. As such, Junker was not criminally convicted under the Act, and he was not sentenced in
11 federal district court until March 12, 2014, well after settling his violations of the Act with the
12 Commission.²¹ The Commission's conciliation agreement with Junker thus vindicated a discrete
13 civil enforcement interest by establishing Junker's knowing and willful violations of the Act and
14 imposing a civil penalty for that conduct.

15 In MUR 6179, the Commission approved a conciliation agreement with Christopher
16 Ward after finding reason to believe that Ward knowingly and willfully violated 2 U.S.C.
17 §§ 432(b)(3), (c), (d), (h)(1), and 434(b) [now 52 U.S.C. §§ 30102(b)(3), (c), (d), (h)(1), and

¹⁹ *Id.* at 4. As in MUR 6231, the Commission opened a matter under review in MUR 6232 to create a public record of its analysis and conclusions, and promote the interests of transparency and providing guidance, before it exercised its prosecutorial discretion to dismiss the matter and closed the file. *Id.* at 1.

²⁰ Certification, MUR 6465 (John Junker) (Nov. 7, 2013); Conciliation Agreement, MUR 6465 (Nov. 7, 2013). Junker represented that he paid restitution of \$62,500, which he claimed "reimbursed the Fiesta Bowl for all prohibited contributions." Conciliation Agreement at ¶ 9, MUR 6465.

²¹ See Certification, MUR 6465 (Nov. 7, 2013), Memorandum to the Comm'n re: Pre-Probable Cause Conciliation, MUR 6465 (Apr. 30, 2013). Junker was eventually sentenced to serve eight months in federal prison. See Ex-Fiesta Bowl Chief Headed to Prison, ASSOC. PRESS (Mar. 13, 2014), http://www.espn.com/college-football/story/_/id/10604586/former-fiesta-bowl-chief-john-junker-gets-8-months-illegal-campaign-contribution-scheme.

1 30104(b)], as well as 11 C.F.R. § 104.14(d).²² Ward pleaded guilty to one criminal count of
2 "Interstate Transportation of Stolen Property" in violation of 18 U.S.C. § 2314.²³ Although
3 Ward admitted embezzling approximately \$844,718 from a federal political committee as part of
4 his guilty plea, he was not charged with violating the Act.²⁴ As such, the Commission's
5 conciliation agreement vindicated a discrete civil enforcement interest by establishing that Ward
6 also violated the Act.

7 Similarly, in MUR 5971, the Commission approved a conciliation agreement with Mary
8 Jennifer Adams after finding reason to believe that Adams knowingly and willfully violated
9 2 U.S.C. §§ 432(b)–(c), 434(b), 439a [now 52 U.S.C. §§ 30102(b)–(c), 30104(b), and 30114].²⁵
10 Adams pleaded guilty to five counts of "Breach of Trust with Fraudulent Intent" and one count
11 of "Financial Identity Fraud" in violation of state law, S.C. Code Ann. §§ 16-13-230 and 16-13-
12 510 (1976).²⁶ Although Adams pleaded guilty on state criminal charges, the Commission's
13 conciliation agreement served a discrete federal enforcement interest by clearly establishing that
14 Adams also violated the Act by embezzling funds from a federal political committee.

15 Under the circumstances presented in this matter, we do not believe that pursuing further
16 action against Barfield is necessary to adequately vindicate the Commission's civil enforcement

²² Certification, MUR 6179 (Christopher Ward) (Feb. 14, 2011); Conciliation Agreement at 1, MUR 6179 (Nov. 29, 2010).

²³ See Memorandum to the Comm'n re: Pre-Probable Cause Conciliation at 2, MUR 6179 (Jan. 28, 2011). Ward was sentenced to a 37-month term in federal prison and ordered to pay restitution of \$812,825; he also consented to a forfeiture order for \$844,718.

²⁴ *Id.*

²⁵ Certification, MUR 5971 (Mary Jennifer Adams) (Mar. 12, 2009); Conciliation Agreement at 1, MUR 5971 (Feb. 13, 2009).

²⁶ Conciliation Agreement at 3, MUR 5971; General Counsel's Report #2 at 1–2, MUR 5971 (Feb. 27, 2009). Adams was sentenced to 10 years of incarceration, with all but 18 months suspended, and a period of 5 years of probation; she was also ordered to pay \$280,688.84 in restitution.

1 interests under the Act. Barfield has admitted embezzling funds from a federal political
2 committee and pleaded guilty to violating the Act. His conduct was all part of the same
3 embezzlement scheme, in that it was part of either the process by which he stole committee
4 funds or an attempt to conceal his theft. As in prior matters where the Commission has declined
5 to pursue further action, Barfield's convictions and substantial criminal punishment — including
6 a prison sentence of more than seven years and almost \$3 million in restitution — sufficiently
7 vindicate the Commission's enforcement interests under the Act. Under these specific
8 circumstances, and in light of the Commission's limited resources, we recommend that the
9 Commission take no further action as to Barfield and close the file in this matter.

10 **IV. RECOMMENDATIONS**

- 11 1. Take no further action as to Kenneth A. "Buddy" Barfield;
12 2. Approve the appropriate letter;
13 3. Close the file.

14 Lisa J. Stevenson
15 Acting General Counsel

16 Date: 2-28-17

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